

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICKEY A. BEAVER,)
Plaintiff,) CASE NO. C04-337C
v.)
JASON COGGER, *et al.*) ORDER DECLINING TO
Defendants.) COMPLAINT AND GRANTING
LEAVE TO AMEND

Plaintiff has filed a civil rights complaint *pro se* pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed *in forma pauperis*. Plaintiff alleges in his complaint that in 2001, he was the victim of a “malicious prosecution” instituted by an individual named “Jason Cogger” and carried out by a variety of police officers and prosecutors in King County. Specifically, plaintiff contends that Cogger maliciously directed two detectives and a prosecutor to bring unfounded criminal charges against plaintiff for “taking a motor vehicle without permission.” (Complaint at 3). Plaintiff maintains that he was then arrested and detained, while awaiting trial. After being wrongfully detained for four and a half months, plaintiff alleges that the case was dismissed on October 15, 2001, “in [his] favor.” Plaintiff also alleges that while he was detained, he was denied medication for depression and he suffered accordingly.

Having reviewed the complaint, the court finds that it is deficient in several respects. Therefore, the court declines to order that the complaint be served on defendants unless and until

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1 plaintiff corrects the deficiencies identified below:

2 (1) On the form that plaintiff used to file his complaint, the very first question is whether
 3 plaintiff had brought any other lawsuits in federal court. Plaintiff's answer was "1." However, the
 4 court's own research reveals that plaintiff has filed a total of *four lawsuits*, in addition to the present
 5 one.¹ Whether plaintiff's omission was intentional or inadvertent, plaintiff is reminded that he
 6 signed the form "under penalty of perjury." Plaintiff must list all the his former and current lawsuits
 7 when he files an amended complaint, as further described below.

8 (2) Plaintiff must clarify the role of defendant Jason Cogger. Plaintiff's complaint does
 9 not state whether "Jason Cogger" is a public employee or a private individual. If Cogger is not a
 10 public employee, or state actor, then he is not amenable to suit under § 1983. *See Crumpton v.*
 11 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

12 (3) Prosecutors are generally shielded from liability in § 1983 actions when they are
 13 acting pursuant to their official role as advocate for the State, performing functions "intimately
 14 associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430
 15 (1976). Prosecutorial immunity does not extend, however, to actions by a prosecutor that are
 16 administrative or investigative in nature. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 271-73
 17 (1993). Plaintiff's allegations in the instant complaint appear to concern actions that the two
 18 prosecutors took solely in their roles as advocates. In order avoid having his claims against these
 19 prosecutors barred by their immunity, plaintiff must allege facts showing that the prosecutors were
 20 acting in administrative or investigative roles.

21 (4) In order to proceed on his claim that he was deprived of his medications, plaintiff
 22 must show that he has exhausted any and all grievance procedures that were available to him while
 23 detained. 42 U.S.C. § 1997e(e) ; *see Booth v. Churner*, 531 U.S. 956 (2001). Plaintiff may satisfy
 24 this requirement by providing a copy of the final grievance resolution showing how the medication

25
 26 ¹ The Case Numbers are: C01-1318Z, C01-1514C, C02-2476L, C04-265RBL.

issue was resolved. If plaintiff is unable to obtain a copy, he must so inform the court and explain why.

(5) **If plaintiff chooses to continue with this lawsuit, then he must file an amended complaint curing the above-mentioned deficiencies within 30 days of the date on which this Order is signed.** All of the allegations he wishes to pursue in this action must be contained in that amended complaint. The amended complaint must carry the same case number as this one, and will operate as a complete substitute for his present complaint. **If no amended complaint is timely filed within 30 days, the court will recommend that this matter be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted.**

(6) The court notes that plaintiff has filed a motion for appointment of counsel. The court will defer consideration of the motion until plaintiff has filed an amended complaint correcting the above deficiencies.

(7) To assist plaintiff in filing an amended complaint, the Clerk is directed to send a copy of the civil rights complaint form to plaintiff. In addition, the Clerk shall send plaintiff a copy of this Order and the General Order for *pro se* litigants, and shall send the Honorable John C. Coughenour a copy of this Order.

DATED this 8 day of March, 2004.

____/S/ Ricardo S. Martinez _____
RICARDO S. MARTINEZ
United States Magistrate Judge